

ESTTA Tracking number: **ESTTA317640**

Filing date: **11/18/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

### Opposers Information

Name	Nordstrom, Inc.		
Entity	Corporation	Citizenship	Washington
Address	1617 Sixth Avenue, Suite 500 Seattle, WA 98101 UNITED STATES		

Name	NIHC, Inc.		
Entity	Corporation	Citizenship	Colorado
Address	701 Southwest Broadway, Fourth Floor Portland, OR 97205 UNITED STATES		

Attorney information	William O. Ferron, Jr. Seed IP Lzw Group PLLC 701 Fifth Avenue, Suite 5400 Seattle, WA 98104 UNITED STATES billf.docketing@seedip.com, litcal@seedip.com Phone:206-622-4900		
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### Applicant Information

Application No	77769311	Publication date	11/17/2009
Opposition Filing Date	11/18/2009	Opposition Period Ends	12/17/2009
Applicant	Blue Athletic Inc. po box 4642 portsmouth, NH 03801 UNITED STATES		

### Goods/Services Affected by Opposition

Class 035. All goods and services in the class are opposed, namely: On-line wholesale and retail store services featuring clothing; Retail apparel stores; Retail jewelry stores; Wholesale and retail store services featuring clothing and accessories
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	1409938	Application Date	01/31/1986
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Registration Date	09/16/1986	Foreign Priority Date	NONE
Word Mark	NORDSTROM RACK		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1972/10/00 First Use In Commerce: 1972/10/00 RETAIL MEN'S AND WOMEN'S CLOTHING STORE SERVICES		

U.S. Registration No.	2980055	Application Date	10/16/2002
Registration Date	07/26/2005	Foreign Priority Date	NONE
Word Mark	NORDSTROM RACK NR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 035. First use: First Use: 2001/04/00 First Use In Commerce: 2001/04/00 Retail store and online retail services, all in the field of apparel, footwear, small leather goods, eyewear, jewelry, and bath, body and personal care products; retail and online retail gift shop services		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	RACK		
Goods/Services	Retail store services including for clothing, apparel, accessories and jewelry		

U.S. Application/Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	THE RACK		
Goods/Services	Retail store services including for clothing, apparel, accessories and jewelry		

Attachments	78976100#TMSN.gif ( 1 page )( bytes ) Nordstrom-DenimRack-Opp.pdf ( 5 pages )(109313 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/William O. Ferron, Jr./
Name	William O. Ferron, Jr.
Date	11/18/2009

THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NORDSTROM, INC. and NIHC, INC.,	)	
	)	Opposition No. _____
Opposers,	)	
	)	Serial No. 77/769311
v.	)	
BLUE ATHLETIC INC.,	)	
	)	
Applicant.	)	Attorney Docket No. 690097.842
_____	)	

**NOTICE OF OPPOSITION**

Nordstrom, Inc., having an address at 1617 Sixth Avenue, Suite 500, Seattle, Washington 98101, and its commonly owned and controlled affiliate NIHC, Inc., having an address at 701 Southwest Broadway, Fourth Floor, Portland, Oregon 97205 (hereafter jointly “Opposers” or “Nordstrom”), believe that they will be damaged by registration of the mark DENIMRACK shown in U. S. Trademark Application Serial No. 77/769311 filed June 26, 2009 in class 35 and published for opposition on November 17, 2009. Opposers therefore oppose this application.

The grounds for this Opposition are as follows:

1. Nordstrom operates retail department stores throughout the United States through which it markets and sells various goods, including but not limited to, clothing, clothing accessories and jewelry.

2. Commencing at least as early as October 1972, more than thirty years prior to the filing of Applicant's intent-to-use application, Nordstrom adopted and has continuously used the marks RACK, NORDSTROM RACK, THE RACK and variants thereof ("Opposers' RACK Marks") in interstate commerce in the United States as trademarks in connection with retail store services featuring goods including but not limited to clothing, apparel, accessories and jewelry.

3. Nordstrom applied for and received U.S. Trademark Registration No. 1,409,938 for the mark NORDSTROM RACK for retail men's and women's clothing store services in class 42. The registration is valid and subsisting and has become incontestable.

4. Nordstrom also applied for and received U.S. Trademark Registration No. 2,980,055 for the mark NORDSTROM RACK NR for retail store and online retail services, all in the field of apparel, footwear, small leather goods, eyewear, jewelry, and bath, body and personal care products, and retail and online retail gift shop services in class 35. The registration is valid and subsisting.

5. Since commencing use of Opposers' RACK Marks as described above, Opposers have generated substantial revenue from the sale of goods in connection with the marks in the United States. Additionally, Opposers have expended substantial sums of money, time and effort in maintaining, advertising, promoting and popularizing Opposers' RACK Marks in the United States.

6. As a result of such use of the Opposers' RACK Marks, and the advertising and promotion of the Nordstrom's RACK retail clothing store services and clothing and related products sold in connection with those services, the Opposers' RACK Marks have become well known in the United States and are recognized as identifying the high-quality services and goods of Opposers. Thus, Opposers' RACK Marks and the associated goodwill are valuable assets of Opposers.

7. Applicant has applied on an intent-to-use basis to register DENIMRACK as shown in the Applicant's application for "On-line wholesale and retail store services featuring clothing; Retail apparel stores; Retail jewelry stores, wholesale and retail store services featuring clothing and accessories" in class 35.

8. Applicant's website at [www.DenimRack.com](http://www.DenimRack.com) sells only denim jeans.

9. Applicant's alleged DENIMRACK mark consists of the descriptive term "DENIM" in combination with "RACK."

10. Applicant visually separates "DENIM" and "RACK" in its use of DENIMRACK and uses RACK alone in taglines and promotions for its services.

11. Applicant's alleged DENIMRACK mark incorporates Opposers' "RACK" mark in its entirety.

12. The services described in Applicant's application include services identical to the retail store services offered under Opposers' RACK Marks and are so closely related to Opposers' services that confusion is likely to result if the parties' respective goods and services are marketed and sold under the same or confusingly similar marks.

13. The mark DENIMRACK for the services described in Applicant's application is confusingly and deceptively similar to Opposers' RACK Marks for Opposers' above-described services, such that the trade and purchasing public will be confused by and deceived into believing that Applicant's goods originate with Opposers, or are otherwise authorized by, sponsored by, licensed by, affiliated with, or associated with Opposers.

14. Upon information and belief, Applicant did not make any use of DENIMRACK prior to the June 26, 2009 filing date of the application.

15. Upon information and belief, Applicant did not make any use of DENIMRACK in connection with the services listed in the application prior to the June 26, 2009 filing date of the application.

16. Upon information and belief, Applicant did not make any use of DENIMRACK in connection with the services listed in the application or any other goods and services, prior to Opposer's first use of Opposers' RACK Marks.

17. Applicant has asserted that "RACK" is descriptive of its services. If correct, DENIMRACK is merely descriptive of Applicant's retail store services offering denim jeans and in that Applicant's limited use of DENIMRACK is insufficient to establish secondary meaning, if Applicant's assertion is correct its mark should be refused registration under Section 2(e)(1).

18. By reason of the foregoing, Opposers would be greatly damaged by the registration of the mark DENIMRACK to Applicant.

WHEREFORE, Opposers pray that this Opposition be sustained, Applicant's application denied and the mark refused registration.

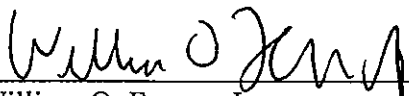
Correspondence Address

Please direct all communications to:

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SEED IP Law Group PLLC  
701 Fifth Avenue, Suite 5400  
Seattle, Washington 98104

DATED this 18<sup>th</sup> day of November, 2009.

Respectfully submitted,  
SEED IP Law Group PLLC

  
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Attorneys for Opposers  
NORDSTROM, INC. and NIHC, INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18<sup>th</sup> day of November, 2009, the foregoing **NOTICE OF OPPOSITION** was served upon Applicant by United States first-class mail, postage-prepaid, addressed as follows:

Joe Hickey  
Blue Athletic Inc.  
P.O. Box 4642  
Portsmouth, NH 03802-4642

  
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Annette Baca